

33. (Newly Added) The method as recited in claim 13, wherein determining is performed by the operating system.

REMARKS

In the Office Action, the Examiner rejected the claims under 35 USC §102. These rejections are fully traversed below.

The claims have been amended to correct minor informalities and to further clarify the subject matter regarded as the invention. Claims 20-33 have been added. Claims 1-33 are now pending.

Reconsideration of the application is respectfully requested based on the following remarks.

REJECTION OF CLAIMS 1-19 UNDER 35 USC §102

In the Office Action, the Examiner rejected claims 1-19 under 35 USC §102 as being unpatentable over Pereira, U.S. Patent No. 5,809,230, ('Pereira' hereinafter. This rejection is fully traversed below.

Pereira discloses a System and Method for Controlling Access to Personal Computer System Resources. See Title. Specifically, Pereira discloses an access control program which is installed on the PC once a user is given access to the system. After the access control program is installed, the program requests the user to register as the Primary User and to identify a password. The password is used to identify the Primary User at subsequent logins. After installation of the program and registration of the Primary User, only the Primary User may thereafter install software on the PC, upgrade the access control program or uninstall the access program. See col. 7, lines 19-49.

The access control program of Pereira modifies the registry file in the Windows 95 environment, since this file is used to define the computer resources which a user can access and which the Windows 95 program accesses to generate displays of program icons and program groups. The user must enter a password to access system resources as defined in the registry file. The access control program may also include a function for limiting a user's access to a computer resource to a particular time period. See col. 10, lines 10-47.

As disclosed in Pereira, to identify or add users to the PC, the Primary User selects the manage users program component. In response to the closing of the manage users function, the access control program generates a file of authorized user identifiers and, as

each user supplies a password, the file is updated with each user's corresponding password. This file is used by the access control program to limit access to the system to authorized users only. See col. 7, lines 49-67. In response to a detected change, the program component resets the system so that all of the program components are reloaded from the hard disk to memory to overwrite the changed program component. See col. 10, line 34- col. 11, line 30.

The rejections are unsupported by the cited reference. Pereira does disclose a system for limiting access to computer resources by users by requiring a password by the users. However, Pereira neither discloses nor suggests a system for limiting resource consumption associated with software that has been newly added to an operating system. Moreover, Pereira neither discloses nor suggests a set of resource controls associated with software that has been added to the operating system, where the set of resource controls identifies one or more resources, where each of the resource controls includes one or more control/limiting values, where each of the control/limiting values has one or more associated actions that are triggered when the corresponding control/limiting value has been exceeded by an operating system entity.

Pereira neither discloses nor suggests the invention of claim 1. Specifically, Pereira neither discloses nor suggests a method of dynamically checking a set of one or more resource controls associated with resource consumption of newly added software to an operating system. Moreover, Pereira neither discloses nor suggests encountering the newly added software and the associated set of one or more resource controls by an operating system entity in the operating system, wherein each of the set of resource controls identifies one or more resources, each of the set of resource controls having one or more limiting values associated therewith, each of the limiting values having one or more associated actions that are triggered if the limiting value is exceeded. Similarly, Pereira neither discloses nor suggests determining whether usage of the a one of the one or more

resources resource by the operating system entity exceeds a one of the limiting values value stored in the one of the set of resource controls corresponding to the one of the resources; triggering the one or more actions associated with the one of the limiting values when usage of the one of the one or more resources by the operating system entity exceeds the one of the limiting values; and granting the one of the one or more resources resource to the operating system entity if the limiting value has not been exceeded. Accordingly, it is submitted that the independent claims 1 and 10-12 are patentably distinct from Pereira.

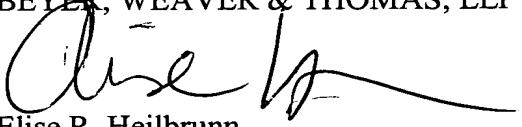
With respect to independent claim 13, Pereira neither discloses nor suggests a method for dynamically adding a resource to an operating system wherein the resource has a variable number of limits, including executing a process request by an operating system entity of the operating system for a resource; searching in a local set of resources corresponding to the operating system entity for a resource control associated with the resource, each of the local set of resources having one or more resource controls, each of the resource controls being associated with a resource and including one or more control values and identifying one or more associated actions that are triggered if the corresponding control value is exceeded; and determining whether a usage value is greater than a one of the control values associated with the resource value from the local set. Accordingly, Applicant respectfully submits that independent claim 13 is patentable over the cited reference.

The dependent claims depend from one of the independent claims and are therefore patentable over Pereira for at least the same reasons. However, the dependent claims recite additional limitations that further distinguish them from the cited references. The additional limitations recited in the independent claims or the dependent claims are not further discussed as the above discussed limitations are clearly sufficient to distinguish the claimed invention from Pereira. Thus, it is respectfully requested that the Examiner withdraw the rejection of the claims under 35 USC §102.

It is submitted that the pending are now in condition for allowance. Reconsideration of the application and an early Notice of Allowance are earnestly solicited.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-0388 (Order No. SUN1P726).

Respectfully submitted,
BEYER, WEAVER & THOMAS, LLP

Elise R. Heilbrunn
Reg. No. 42,649

BEYER, WEAVER & THOMAS, LLP
P.O. Box 778
Berkeley, California 94704
Tel. (510) 843-6200

The Applicant's Mark NETSUITE has Acquired Secondary Meaning

While the Applicant denies that its mark is descriptive, the mark has acquired a secondary meaning. Although, at this time, the Applicant is only submitting a very limited amount of evidence in support of their assertion, such secondary meaning is clearly exemplified in the search results (a few examples of which are included in Exhibits E-M). As exemplified, nearly 104,000 hits, nearly all of which relate to NetSuite, Inc. or the NetSuite products.

Although the Applicant's continuous, substantially exclusive use may not be comparatively long, such use has occurred during the advent of the internet. In such times widespread usage and secondary meaning of a mark may be achieved much faster than in the past. McCarthy on Trademarks and Unfair Competition, Vol. 2, §15:56 (2002).

CONCLUSION

In view of the foregoing, it is respectfully submitted that Applicant's mark is not merely descriptive of providing on-line business application products. In that regard, any doubt as to the mark being "suggestive" or "merely descriptive" is to be resolved in Applicant's favor because if the mark is merely descriptive, then other parties will certainly have the opportunity to present evidence to that effect in opposition proceedings. *In re Gourmet Bakers, Inc.*, 173 U.S.P.Q. 565 (TTAB 1972). Accordingly, it is submitted that the Application is now in condition to be passed for publication, and such action is respectfully solicited.

Should the Examining Attorney have any questions a telephone call to Applicant's attorney at (510) 843-6200 is invited.

The Commissioner is hereby authorized to charge any additional fees, including any extension fees, which may be required or credit any overpayment directly to the account of the undersigned, Deposit Account No. 500388 (Order No. NETLT001.1).

Respectfully submitted,